

Case No. 2:10-cv-04018-NKL

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Defendant LegalZoom.com (“LegalZoom”) has moved to dismiss for improper venue based on a forum-selection clause that LegalZoom included in the “clickwrap” agreement on its website. The forum-selection clause, if enforced, would require that Plaintiffs file suit “in the courts of the city of Los Angeles, state of California.”

The Court should deny this motion for three reasons. First, for a forum-selection clause to be enforceable, there must be a valid contract. A contract for the unauthorized practice of law, however, is not a valid contract. Second, LegalZoom’s forum-selection clause is not enforceable because it is unfair and unreasonable. Finally, LegalZoom’s forum-selection clause is not enforceable because it is ambiguous — by its terms, it is impossible to determine the appropriate forum.

I. Introduction

Plaintiffs have alleged four claims against LegalZoom. In Count I, Plaintiffs seek recovery based on LegalZoom’s unauthorized practice of law in violation of §484.010, RSMo. In Count II, Plaintiffs seeks recovery under the theory of money had and received. In Counts III and IV, Plaintiffs seek recovery based on LegalZoom’s violation of the Missouri Merchandising Practices Act. All of these claims are based on Missouri law. All of these claims arise out of LegalZoom’s unauthorized practice of law in Missouri. Furthermore, all of the named Plaintiffs and putative class members are Missourians.

The Plaintiffs did not negotiate these terms of service. Instead, the terms were presented on a take-it-or leave-it basis. See Aff. of Todd Janson attached as Ex. 1, and Aff. of Chad Ferrell, attached as Ex. 2. As reflected in Plaintiffs’ affidavits, and the factual background set forth by LegalZoom in its suggestions in support of its motion, LegalZoom presented Plaintiffs with adhesion contracts.

As a preliminary matter, to decide this motion, the Court must determine which law to apply. There is some disagreement among the federal courts of appeal as to whether state law or federal law applies to a decision of whether to enforce a forum-selection clause, and the Eighth Circuit has not adopted a position. *Servewell Plumbing, Inc. v. Federal Ins. Co.*, 439 F.3d 786, 789 (8th Cir. 2006). In this case, whether Missouri law or federal law applies will not affect the outcome because the federal standard and the Missouri standard are the same. *Paramount Properties, LLC v. LaSalle Bank Nat'l Assoc.*, No. 4:08-cv-00193, 2008 U.S. Dist. Lexis 27596 (E.D. Mo. Apr. 4, 2008)

Assuming that state law did apply, the clickwrap agreement containing the forum-selection clause that LegalZoom seeks to enforce also contains a California choice-of-law clause. Despite this choice-of-law clause, curiously, in support of its motion, LegalZoom has cited only Missouri law. The reason is apparent: under California law, LegalZoom's forum-selection clause would not be enforceable. *Aral v. Earthlink, Inc.*, 36 Cal. Rptr. 3d 229, 241 (Cal. Ct. App. 2005) (holding that a forum selection-clause that requires a consumer to travel 2,000 miles to recover a small sum is not reasonable, citing *Smith, Valentino & Smith, Inc. v. Superior Court*, 551 P.2d 1206 (Cal. 1976) and *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991)).

Plaintiffs agree with LegalZoom that Missouri law, not California law, should apply to the Court's decision on this motion. Plaintiffs do not believe that the California choice-of-law clause is enforceable because there is no valid contract, as will be discussed infra, in § II.A. But based on the position that LegalZoom has taken in support of this motion, LegalZoom is precluded from later arguing in this litigation that the California choice-of-law clause is somehow enforceable.

II. Argument

A. The Forum-Selection Clause Is Not Enforceable Because There Is No Valid Contract

As LegalZoom acknowledges, the first issue is whether a valid contract exists. (*See* Document 18, Suggs. in Supp. of Mot. to Dismiss p.4, citing *Burcham v. Expedia, Inc.*, No. 4:07-cv -1963, 2009 WL 586513, at *2 (E.D. Mo. Mar. 6, 2009)). LegalZoom proceeds to argue that online agreements are valid.

Plaintiffs do not take issue with the fact that online agreements can be valid. But there can be no valid contract for performing a service that violates Missouri law. Plaintiffs' allege that LegalZoom is engaging in the unauthorized practice of law in Missouri. For purposes of this motion, Plaintiffs' allegations must be taken as true. *Hicks v. Clay County*, 636 F. Supp. 2d 903, 912 (W.D. Mo. 2008). As such, LegalZoom cannot overcome the first hurdle it must clear to enforce the forum-selection clause — namely, that a valid and enforceable contract exists.

Enforceable contracts cannot arise out of transactions prohibited by statute. *Gilbert v. Edwards*, 276 S.W.2d 611, 620 (Mo. App. 1955). The illegality inherent at the inception of such contracts taints them throughout and effectually bars enforcement. *Schoene v. Hickam*, 397 S.W. 2d 596, 602 (Mo. 1965) (contract for commission between plaintiff and unlicensed real-estate broker not enforceable); *see also O'Bannon v. Widick*, 198 S.W. 432, 433 (Mo. App. 1917) (contract for medical care performed by unlicensed person not enforceable); *Reisler v. Dempsey*, 232 S.W. 229, 230 (Mo. App. 1921) (contract for prize-fighting not enforceable).

In the context of the unauthorized practice of law, Missouri courts have not only refused to enforce contracts for the unauthorized practice of law, but have gone the further step of upholding treble damages for fees charged to consumers in violation of §484.010, RSMo. *See*,

e.g., Eisel v. Midwest BankCentre, 230 S.W.3d 335 (Mo. 2007) (en banc) (affirming award of treble damages to consumers who had contracted with Midwest BankCentre for services deemed the unauthorized practice of law); *Curry v. Dahlberg*, 110 S.W.2d 742, 748 (Mo. 1937) (en banc) (holding that a contract for services involving the unauthorized practice of law invalid because contracts for illegal purposes are invalid).

In this case, Plaintiffs allege that the purported contracts between Plaintiffs and LegalZoom were for the unauthorized practice of law in violation of §484.010, RSMo. Therefore, the purported contracts were void as illegal from their inception. The forum-selection clause in these contracts may not be enforced against Plaintiffs. In short, because the contracts are void, the forum-selection clauses are also void and unenforceable.

B. The Forum-Selection Clause Is Not Enforceable Because It Is Unfair and Unreasonable

Even if the underlying contracts were enforceable, the forum-selection clause on LegalZoom's website cannot be enforced. Under both Missouri law, and federal law, a forum-selection clause cannot be enforced if it is either unfair or unreasonable. *High Life Sales Co. v. Brown-Foreman Corp.* 823 S.W.2d 493, 495 (Mo. 1992) (en banc); *Servewell Plumbing, LLC v. Federal Ins. Co.* 439 F.3d 786, 789-90 (8th Cir. 2006). The forum-selection clause at issue here is both unfair and unreasonable. It is unfair because the contract is of one of adhesion. It is unreasonable because Missouri has a substantial interest, as reflected in its court decisions and statutes, in protecting the public from the unauthorized practice of law within its borders.

1. The Forum-Selection Clause Is Unfair Because It Is a Contract of Adhesion

In *High Life Sales*, the court held that as a threshold matter, a court must consider whether the forum-selection clause is “unfair.” The court stated, “Many courts have refused to enforce a forum[-]selection clause on the grounds of unfairness if the contract was entered into under circumstances that caused it to be adhesive.” *High Life Sales*, 823 S.W.2d. at 497 (citing *Colonial Leasing Co. of New England v. Best*, 552 F. Supp. 605, 607-08 (D. Or. 1982)). To make this determination, the inquiry is “if the contract was entered into under circumstances that caused it be adhesive.” *Id.* The court explained: “An adhesive contract is one in which the parties have unequal standing in terms of bargaining power (usually a large corporation versus an individual) and often involve take-it-or-leave-it provisions in printed form contracts.” *Id.*

Examining the contract before it, the court determined that it was not adhesive because it was negotiated by counsel for the parties in give-and-take negotiations. *Id.* The court also found an additional reason why enforcement of the forum-selection clause would not be unfair. The forum-selection clause provided that if the franchisee were to institute suit, it would be required to initiate suit at the principal place of business of the franchisor. *Id.* Likewise, if the franchisor initiated the suit, it would be required to initiate suit at the place of business of the franchisee. *Id.* Noting the clause was reciprocal and would serve to discourage hasty litigation, the Court found that its enforcement could not be said to be unfair. *Id.*

Based on the standard articulated in *High-Life Sales*, LegalZoom’s forum-selection clause is unenforceable. In contrast with the clause at issue in *High Life Sales*, Plaintiffs entered LegalZoom’s clickwrap agreement under circumstances that were adhesive because its terms were not the subject of give-and-take negotiation. As stated in the affidavits presented by both Plaintiffs and by LegalZoom, the terms were presented on a take-it-or-leave-it basis. Moreover,

the parties were in an unequal bargaining position. Plaintiffs are individuals while LegalZoom is a nationwide corporation. In sum, the circumstances show of a contract of adhesion.

LegalZoom's forum-selection clause is also unfair because, unlike the clause at issue in *High Life Sales*, it is not reciprocal. All disputes are to be resolved by the courts of Los Angeles, California, the location of LegalZoom's business. Where a venue selection clause provides a non-neutral site, it will not be enforced. *Swain v. Auto Services, Inc.*, 128 S.W.3d 103, 108 (Mo. App. 2003) (venue provision providing for arbitration in Arkansas not enforceable where plaintiff was a Missouri consumer and defendant was an Arkansas corporation). As in *Swain*, LegalZoom's one-sided forum-selection clause should not be enforced because it is unfair.

In a very recent decision involving a claim of unlawful practice of law, a Missouri appellate court determined that a forum-selection clause designating Illinois as the forum for resolution of all disputes was unenforceable as unfair. *Jitterswing, Inc. v. Francorp, Inc.*, No. ED93045, 2010 WL 933763 (Mo. App. Mar. 16, 2010). In *Jitterswing*, the plaintiff and defendant entered into an agreement where the defendant would create a franchise program for the plaintiff, including associated documents and forms. *Id.* at *1. The plaintiff filed suit against the defendant in Missouri, alleging that the defendant's actions under the agreement constituted the practice of law without a law license. The defendant moved to dismiss, citing a provision of the agreement providing that any dispute would be resolved in accordance in the state of Illinois. *Id.* The trial court granted the motion.

Reversing the trial court, appellate court determined that the forum-selection clause's language did not encompass the unlawful practice of law claim, but that even if it did encompass the claim, the forum-selection clause was unenforceable as unfair. *Id.* at *2. The court explained:

We find that in enforcing the forum selection clause in the contract between Jitterswing and Francorp would create an unfair result. Jitterswing's claim for practice of law without a license occurred in Missouri and arises under section 484.020. If required to bring its claim in Illinois, Jitterswing would be without recourse, as this is a tort claim created by a Missouri statute and the courts of Illinois would be without jurisdiction.

Id. As in *Jitterswing*, enforcement of the forum selection clause in the present case would create an unfair result. A claim for the unlawful practice of law in Missouri should not be decided by the courts of a foreign jurisdiction.

2. The Forum-Selection Clause is Unreasonable Because it Contravenes a Significant Public Policy in the State of Missouri

LegalZoom's forum-selection clause is not enforceable because enforcement would be unreasonable. Enforcement would contravene a significant public policy in Missouri: the protection of the public from the unauthorized practice of law. Under both federal law and Missouri law, forum-selection clauses are not enforceable when enforcement contravenes a strong public policy. In *Servewell Plumbing*, the Eighth Circuit stated: "[A] forum[-] selection clause may be set aside if 'enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or judicial decision.'" *Servewell*, 439 F.3d at 790 (quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972)). In *High Life Sales*, the Missouri Supreme Court reached a similar holding. *High Life Sales Co.*, 823 S.W.2d 493 at 494.

In *High Life Sales*, the plaintiff was the beer distributor for Miller Brewing Company in Jackson County, Missouri. The plaintiff and the defendant were parties to a distributorship agreement. The distributorship agreement contained a forum-selection clause providing that any action related to the agreement shall be brought only in the judicial district containing the defendant's principal place of business. *Id.* at 494. The defendant terminated the distributorship

agreement. The plaintiff sued, alleging that the termination violated § 407.413, RSMo, which governs the termination of liquor franchises. The defendant moved to dismiss arguing, among other things, that the forum-selection clause in the distributorship agreement required that the lawsuit be brought in Kentucky. *Id.* at 494-95. The trial court denied the motion, and entered judgment on a jury verdict for the plaintiff.

The defendant appealed, arguing that the trial court erred by not dismissing based on the forum-selection clause. The court rejected these arguments and affirmed. It held that enforcement of the forum-selection clause would be unreasonable based on the important public policy to the state of Missouri in determining the application of § 407.413, RSMo to the distributorship agreement at issue. *Id.* at 497-98.

The court determined that Missouri had an important interest at stake in the enforcement of § 407.413 RSMo. It explained:

It is evident that in this area what one state may approve and even encourage, another state may prohibit and declare illegal. This principle even has constitutional endorsement by reason of the Twenty-First Amendment to the United States Constitution repealing Prohibition. Thus, the interest that a particular state has in construing and applying liquor control legislation in its own state is apparent.

It is very much within the interest of the state of Missouri to protect its licensed liquor distributors from unwarranted or unjustified termination of their franchise.

Id. at 498. The court noted that liquor distributors were protected by § 407.413 from the unjust termination of their franchise. Essentially, the court found that Missouri's interest in protecting its liquor distributors outweighed any public policy considerations pertaining to the enforcing of the forum-selection clause. It stated:

[T]he general subject of liquor control in the specific statutory protection of a holder of a liquor distribution franchise carry

heightened public policy considerations that outweigh any public policy considerations involved in the enforcement of the forum-selection clause.

Id. at 498. Thus, where Missouri has a substantial interest in enforcing its law for the protection of the public, such public policy considerations outweigh any public policy considerations pertaining to the enforcement of a forum-selection clause.

The court also held that other factors made enforcement of the forum-selection clause unreasonable. The Court expressly noted that Kentucky did not have a statute similar to Missouri's, and that Kentucky's public policy as to franchise termination was contrary to that of Missouri. The Court concluded held that it "should not abrogate the responsibility of interpreting this important statute to the Kentucky Courts." *Id.* at 499-500.

As in *High Life Sales*, this case involves a matter of strong public policy of significant importance to Missouri. Missouri courts have continually recognized that the regulation of the practice of law is an important state interest because the public must be protected from those who are unskilled or otherwise unsuited to engage in the practice of law. *In re Mid-Am. Living Trust Assocs. Inc.*, 927 S.W.2d 855, 859 (Mo. 1996) (en banc). Further, Missouri statutes provide both criminal and civil penalties for the unlawful practice of law, reflecting the importance of this state interest. § 484.020 RSMo.

In *In re Mid-America Living Trust Associates*, the Chief Disciplinary Counsel sought to enjoin a corporation not licensed to practice law in Missouri from preparing trusts, wills and powers of attorney for Missouri residents. *Id.* at 856. Granting the Chief Disciplinary Counsel's request, the Court noted its duty to protect the public from the unauthorized practice of law. It stated, "The duty of this Court is not to protect the Bar from competition but to protect the public

from being advised or represented in legal matters by incompetent or unreliable persons.” *Id.* at 858. The court continued:

The consequences of incompetent representation are especially dangerous because they are often invisible for many years, but then cause great hardship and expense, such as when a deed, will, or trust is found to be ineffective or not to achieve the results originally intended. Accordingly, we seek to allow only those who have been found by investigation and examination to be properly prepared and skilled to practice law and who demonstrate that they conform to higher standards of ethical conduct necessary in fiduciary and confidential relationships.

Id. Thus, the Court recognized that allowing those who are not competent in the practice of law pose a significant threat to the public and should be forbidden from doing so.

Recent decisions of the Missouri Supreme Court have reconfirmed that only licensed attorneys may be compensated for the preparation of legal documents. *See, e.g., Carpenter v. Countrywide*, 250 S.W.3d 697 (Mo. 2008) (en banc); *Eisel v. Midwest BankCentre*, 230 S.W.3d 335 (Mo. 2007) (en banc).

Missouri’s well-established public policy and regulatory scheme contrasts with California’s, which permits registered non-attorney “legal document assistants” to, for compensation, provide document preparation services to members of the public who represent themselves in legal matters.¹ Cal. Bus. & Prof. Code §§ 6450-6456. Given California’s substantially different policy on the practice of law, enforcement of the provisions of Missouri’s statute, namely § 484.020, RSMo., should not be left to the courts of California.

LegalZoom relies upon the decision in *Burcham v. Expedia, Inc.*, No. 4:07-cv -1963, 2009 WL 586513, at *2 (E.D. Mo. Mar. 6, 2009), for the blanket assertion that forum-selection

¹ A “disclaimer” on LegalZoom’s website states that it is a “is a registered and bonded legal document assistant.” <http://www.legalzoom.com/disclaimer-popup.html>

clauses in clickwrap agreements are enforceable. In *Burcham*, the plaintiff booked a hotel room through the Expedia website and later sued Expedia under the Missouri Merchandising Practices Act, asserting the hotel did not have the amenities promised on the website, such as a pool, bar and restaurant. *Id.* at *2. The court determined that the forum-selection clause in the clickwrap agreement of the Expedia website should be enforced. Unlike this case, however, the *Burcham* court expressly stated that there was no showing that the Expedia forum-selection clause “is unreasonable or contravenes a strong public policy in the State of Missouri.” *Id.* at *5. Thus, where a strong public policy interest is not involved, such agreements are enforceable.

The *Burcham* decision is readily distinguishable from this case. This case concerns an important question of public policy embodied in numerous court decisions and state statutes. *Burcham*, in contrast, was a commonplace commercial dispute that did not invoke larger public policy considerations. In short, *Burcham* does not apply to the present circumstances.

C. The Forum Selection Clause Cannot Be Enforced Because It Is Vague and Ambiguous

The court should not enforce LegalZoom’s forum-selection clause because it is vague and ambiguous. “[W]hen ordinary contract principles fail to elucidate a single reasonable interpretation for an ambiguous forum selection clause, and instead the provision is subject to opposing yet reasonable interpretation, an interpretation is preferred which operates more strongly against’ the drafter.” *Public Sch. Ret. Sys. of Mo. v. State St. Bank & Trust Co.*, No. 09-4215-CV-C-NKL, 2010 WL 318538, at *2 (W.D. Mo. Jan. 21, 2010) (quoting *Global Satellite Commc’n Co. v. Starmill U.K. Ltd.*, 378 F.3d 1269, 1271 (11th Cir. 2004)).

In support of its motion to dismiss, LegalZoom attached a declaration of Edward Hartman (Docket No. 17-1), which attached as exhibit B the terms and conditions of the

clickwrap agreement containing the forum-selection clauses at issue. In exhibit B, at ¶ 3, the clickwrap agreement states, “[T]he courts of the city of Los Angeles, state of California, shall have exclusive jurisdiction over any disputes.”²

This clause is vague and ambiguous. Is LegalZoom asking that this case be transferred to a municipal court, superior court, or some other court located within the city limits of Los Angeles? What is a “city” court? Asking a municipal court in the city of Los Angeles to determine whether LegalZoom violated the rights of Missouri consumers by committing the unauthorized practice of law in Missouri violates Plaintiffs’ and the putative class members’ opportunity to have their day in court. In any event, because this forum-selection clause, drafted by LegalZoom, is ambiguous as to which of the various courts that may be located in Los Angeles may hear this case, the Court should not enforce it.

III. Conclusion

LegalZoom’s forum-selection clause should not be enforced because there can be no valid contract for the unauthorized practice of law, because the forum-selection clause is unfair and unreasonable, and because the forum-selection clause is ambiguous. Therefore, Plaintiffs request that the Court deny LegalZoom’s motion to dismiss.

² In Exhibit C, ¶ 3, the clickwrap agreement states, “that the courts of the County of Los Angeles, State of California, shall have exclusive jurisdiction over any disputes.”

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CERTIFICATE OF SERVICE

I certify that on March 25, 2010, I filed the foregoing with the Clerk of the Court using the CM/ECF system. The system sent notification of this filing to the following:

Party	Counsel
Defendant LegalZoom.com, Inc.	Robert M. Thompson James T. Wicks BRYAN CAVE LLP One Kansas City Place 1200 Main Street, Ste. 3500 Kansas City, MO 64105 816.374.3200, 816.374.3300 (fax) John Michael Clear Michael Biggers James Wyrsh BRYAN CAVE LLP One Metropolitan Square – Ste. 3600 211 N. Broadway St. Louis, MO 63102 314.250.2000, 314.259.2020 (fax)

/s/ David T. Butsch _____

TODD JANSON, et al.,

V.

Defendant.

Affidavit of Todd M. Janson

1. My name is Todd M. Janson and I am over the age of eighteen and have personal knowledge of all the matters contained herein.

2. I was in need of Will and after hearing an ad for Legalzoom.com I went to their website to see if they could provide me a Will.

3. The web site informed me that Legalzoom.com could save me the cost of hiring an attorney for the preparation of a Will and instead I could pay Legalzoom.com a fraction of the cost for the legal document I needed, tailored to fit my needs after I provided my information to Legalzoom.com.

4. While on Legalzoom.com's website, I answered numerous questions and provided my individual information which led to the production of a Will for me. See copy of Will attached hereto as Exhibit 1. In return for the document they produced, I was charged and paid Legalzoom.com \$ 121.95. See, a copy of my credit card statement attached hereto as Exhibit 2.

5. While using Legalzoom.com's services, I was also provided additional information advising me how to change my Will in the future and other information about legal matters involving the transfer of title to my property upon my death. The Will and material was sent from Legalzoom.com to my home in Missouri. This material from Legalzoom.com is attached hereto as Exhibit 3.

6. When I entered my payment information on the Legalzoom.com website, I did not read anything about disputes with Legalzoom.com being resolved in California.

7. I did not draft any of the terms of service.

8. I did not have the opportunity to negotiate any terms of service with Legalzoom.com.

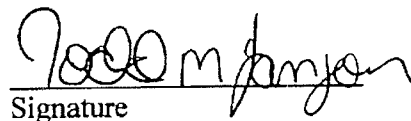
9. The terms of service were presented to me on a take-it-or-leave-it basis. There was no negotiation between myself and Legalzoom.com relating to terms of service.

10. I live and am employed in the state of Missouri and have no property or business in the state of California.

11. In the event this case was transferred to California I would likely not be able to continue with this case due to the cost and the inconvenience of traveling between California and Missouri. One roundtrip plane ticket to the state of California costs much more than the amount Legalzoom.com charged me for my will.

12. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT


Signature

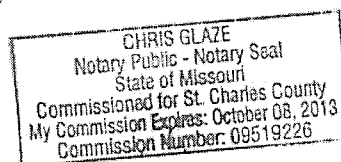
3-10-10
Date

STATE OF MISSOURI)
) ss
COUNT OF ST. LOUIS)

On this 10 day of March, 2010, before me personally appeared Todd M. Janson to me known to be the person described in and who executed the foregoing affidavit and acknowledged that the statements therein are true.

Chris Glaze
Notary Public

My Commission Expires: 10-8-2013



***THE
LAST WILL AND TESTAMENT
OF***

Todd Janson

I, Todd Janson, a resident of the State of Missouri and County of Fenton; and being of sound mind, do hereby make, publish and declare this to be my Last Will and Testament, thereby, revoking and making null and void any and all other Last Wills and Testaments and/or Codicils to Last Wills and Testaments heretofore made by me. All references herein to this Will shall be construed as referring to this Last Will and Testament only.

FAMILY CLAUSE

At the time of executing this Last Will and Testament, I am married to Amy Janson. I have no children.

RESIDENCY CLAUSE

Having in mind the possibility that I may temporarily reside outside of, or simply be absent from the State of Missouri and County of Fenton, at the time of my death, I elect and hereby declare that this Will and each and every disposition and provision contained herein shall be construed and regulated by and in accordance with the laws of said State of Missouri. It is my desire that this Will be probated in the State of Missouri, my place of domicile, and that the principal administration of my Estate be made in said State of Missouri and that none of the assets of my Estate which may be found in my place of domicile, be remitted to any other jurisdiction for administration or distribution.

DEBT CLAUSE

I direct that the executor named pursuant to this Last Will and Testament review (as soon after my death as practical) all of my just debts and obligations, including funeral expenses and the expenses incident to my last illness; excepting those long term debts secured by real or personal property which may be assumed by the Heir of such property, unless such assumption is prohibited by law or upon agreement by the Heir. The executor shall pay these just debts only after the creditor provides sufficient evidence to support their claim.

My executor shall pay out of my gross Estate, as if they were my debts, and without proration or appointment, all estate and inheritance taxes, by whatever name called; (including any interest due thereon) becoming payable because of my death in respect to all property comprising my gross Estate for death tax purposes, whether or not such property passes under this Last Will and Testament.

I further direct that if any Heir or Heirs named in this Last Will and Testament should be indebted to me at the time of my death, and evidence of such indebtedness is provided or made available to the Executor of my Estate, then that share of my Estate which I give, devise, and bequeath to any and each such Heir shall be reduced in value by an amount equal to the proven indebtedness of such Heir or Heirs, unless I have specifically provided in this Last Will and Testament for the forbearance of such debt, or unless such Heir is the sole Principal Heir.

PRINCIPAL DISTRIBUTION CLAUSE

I give, devise, and bequeath to my spouse, Amy Janson (my "Principal Heir"), if my spouse shall survive me, 100% of my gross Estate after payment of all my just debts, expenses and taxes.

ALTERNATE PRINCIPAL HEIRS

In the event that my spouse does not survive me, I give, devise, and bequeath to the persons named below (my "Alternate Principal Heirs"), if he or she, whichever the case may be, shall survive me, all of the residue and remainder of my gross Estate after payment of all my just debts, expenses, taxes and alternate specific bequests, if any, in the percentages set forth below.

1. Name: Nicholas Pope
 Relation: Cousin
 Percentage: 50%
2. Name: Sarah Anderson
 Relation: Niece
 Percentage: 50%

ALTERNATE SPECIFIC BEQUESTS

In the event that my spouse does not survive me, I give, devise, and bequeath to the persons named below, if he or she, whichever the case may be, shall survive me, the following items of property:

1. To my father, Hank Janson,
 I give: My gun collection.

EXECUTOR APPOINTMENT CLAUSE

(A) I nominate, constitute and appoint my wife, Amy Janson, to be the Executor of my Estate.

(B) If, for any reason, my first nominee Executor should fail to qualify or be unable or unwilling to accept or to continue as the Executor of my Estate, I nominate, constitute and appoint my friend, Mark Wiese, Jr., to be the Executor of my Estate.

(C) If for any reason, all of the nominees designated above in Paragraphs (A) and (B) should fail to qualify or be unable or unwilling to accept or to continue as Executor of my Estate, I nominate, constitute and appoint my father, Hank Janson, to be the Executor of my Estate.

EXECUTOR POWER OF APPOINTMENT CLAUSE

(A) All directives in this Will that use by reference the word Executor mean and include any person named herein as my Executor (or personal representative, as may be defined under state law) and any person who may be acting in either capacity, at any time. Such person shall have broad and reasonable discretion under the directives of this my Last Will and Testament with respect to any property, real or personal, left by or held by me, or acquired by my Executor on behalf of my Estate.

(B) I wish my Executor to have broad and reasonable discretion in the administration of my Estate, to have all of the powers permitted to be exercised by an Executor under state law, and to be able to do everything he or she deems advisable for the best interest of my Estate and the Heirs thereof, all without the necessity of court approval or supervision. I direct that my Executor perform all acts, take all such proceedings, and exercise all such rights and privileges, although not specifically mentioned in this Will, with relation to any such property, as if the absolute owner thereof; and in connection therewith, to make, execute and deliver any instruments, and to enter into any covenants or agreements binding my Estate or any portion thereof.

(C) No such person named in, or appointed in connection with this Will in a fiduciary capacity shall be required to file any bond or other security for the faithful performance of his or her duties as such fiduciary in any jurisdiction; and if, despite this directive, a bond should be required, I request that it be accepted without sureties and in a nominal amount.

ESTABLISHMENT OF PET TRUST

I give and bequeath the sum of \$10,000.00 dollars to Jeff Gau as trustee pursuant to the probate laws of the State of Missouri, as applicable to the establishment of a trust for the care and maintenance of family pets or other animals. Should such law not exist, I give and bequeath the sum above to the trustee above to be held in an honorary or other trust established according to the laws of the State of Missouri. If Jeff Gau is unable or unwilling to serve, then Tracy Pope shall serve as the alternate. The trustee shall apply as much of the net income and principal of this trust as the trustee determines in his or her sole discretion to be necessary or appropriate for the lifetime care and maintenance of any animals that I may own at the time of my death. After the death of all such animals, or at such time as the trust terminates or fails for any reason, any property remaining in this trust shall be distributed to my Principal Heir(s).

NON-LIABILITY OF FIDUCIARIES

Any fiduciary, including my Executor and any trustee, who in good faith endeavor to carry out the provisions of this Last Will and Testament, shall not be liable to me, my Estate, or my heirs, for any damages or claims arising because of their actions or inactions based on this Last Will and Testament. My Estate shall indemnify and hold them harmless.

SAVING CLAUSE

If a court of competent jurisdiction shall at any time invalidate or find unenforceable any provision of this Will, such invalidation shall not be construed as invalidating the whole of this Will. All of the remaining provisions shall be undisturbed as to their legal force and effect. If a court finds that an invalidated or unenforceable provision would become valid if it is limited, then such provision shall be deemed to be written, deemed, construed and enforced as so limited.

IN WITNESS WHEREOF, I, the undersigned Testator, declare that I sign and execute this instrument on the date written below as my Last Will and Testament and further declare that I sign it willingly, that I execute it as my free and voluntary act for the purposes expressed in this document and that I am eighteen years of age or older, of sound mind and under no constraint or undue influence.

(Signature of Todd Janson)

SSN:

Date: _____

Page 6 of my Last Will and Testament

(Signature)

ATTESTATION CLAUSE

This Last Will and Testament, which has been separately signed by Todd Janson, the Testator, was signed, executed and declared by the above named Testator as his or her Last Will and Testament in the presence of each of us. We, in the presence of the Testator and each other, under penalty of perjury, hereby subscribe our names as witnesses to the declaration and execution of the Last Will and Testament by the Testator, and we declare that, to the best of our knowledge, said Testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

1. _____
(Signature of witness) _____
(Print Name)

Date: _____

(Address)

(City, State, ZIP)
2. _____
(Signature of witness) _____
(Print Name)

Date: _____

(Address)

(City, State, ZIP)

SELF-PROVING AFFIDAVIT

State of Missouri
County of Fenton

I, Todd Janson, the undersigned Testator, being first duly sworn, do declare to the undersigned authority that I signed and executed the attached or annexed instrument as my Last Will and Testament and that I signed it willingly, that I executed it as my free and voluntary act for the purposes expressed in that document and that at the time I signed the document I was eighteen years of age or older, of sound mind and under no constraint or undue influence.

Date: _____
(Signature of Todd Janson)

We, the undersigned witnesses, being first duly sworn, do each declare to the undersigned authority the following: (1) the Testator declared to each of us that the attached or annexed instrument is his or her Last Will and Testament; (2) the Testator executed the will in our presence; (3) each of us, in the presence of the Testator, signed the will as witness; and (4) to the best of our knowledge the Testator is eighteen years of age or older, of sound mind and under no constraint or undue influence.

1. _____
(Signature of witness) (Print Name)

2. _____
(Signature of witness) (Print Name)

Acknowledgement of Notary Public:

Subscribed, sworn and acknowledged to me on this ____ day of _____, 20____,
by Todd Janson, as Testator, and _____ and
_____, as witnesses.

Witness my hand and seal.

Signature of Notary Public: _____

STATEMENT OF INTERMENT, CREMATION and WISHES

I, Todd Janson, the undersigned, having previously executed a Last Will and Testament on the date hereof, hereby state that, in addition to the directives and bequests set forth in said Last Will and Testament, it is my desire that my remains be cremated.

My further wishes and directives are as follows: I would like my ashes to be spread out somewhere in the ocean. Any ocean will do.

Dated: _____

Signature of Todd Janson

WITNESS ATTESTATION CLAUSE

This Statement of Interment, Cremation and Wishes, which has been separately signed by Todd Janson was signed, executed and declared in the presence of each of us. We, in the presence Todd Janson and each other, under penalty of perjury, hereby subscribe our names as witnesses to the declaration and execution of the Statement of Interment, Cremation and Wishes by Todd Janson and we declare that, to the best of our knowledge, Todd Janson is eighteen years of age or older, of sound mind and under no constraint or undue influence.

1. _____
(Signature of witness)

(Print Name)

Date: _____

(Address)

(City, State, ZIP)

2. _____
(Signature of witness)

(Print Name)

Date: _____

(Address)

(City, State, ZIP)

01/11/10

[REDACTED]

\$0.00

[REDACTED]



Account number: [REDACTED]

\$ [REDACTED]

Make your check payable to:
Chase Card Services.
Please write amount enclosed
New address or e-mail? Print on back.

P 1-11-11

I want to purchase optional
Chase Fraud Detector.
I've read the Benefits and
Disclosures on back of insert.

Initials _____ Date _____

72347 BEX 2 35109 D
TODD M JANSON
299 ROMAINE SPRING VW
FENTON MO 63026-5833



CARDMEMBER SERVICE
PO BOX 94014
PALATINE IL 60094-4014



[REDACTED]

CHASEFREEDOMSM

Statement Date:
11/18/09 - 12/17/09



Manage your account online
www.chase.com/creditcards

Minimum Payment: [REDACTED]
Payment Due Date: 01/11/10

Minimum Payment Due for Credit Access Line
Total Minimum Payment Due

Additional contact information
conveniently located on reverse side

ACCOUNT SUMMARY

Account Number: [REDACTED]

Previous Balance	[REDACTED]	Credit Access Line	[REDACTED]
Payment, Credits	[REDACTED]	Available Credit	[REDACTED]
Purchases, Cash, Debits	[REDACTED]	Cash Access Line	[REDACTED]
Finance Charges	[REDACTED]	Available for Cash	[REDACTED]
New Balance	[REDACTED]		

CHASE FREEDOM: ULTIMATE REWARDSSM SUMMARY

Previous rewards balance	\$78.08	Start redeeming today Visit
Rewards earned on purchases	\$23.22	Ultimate Rewards at
Bonus rewards from Ultimate Rewards Travel	\$0.00	www.chase.com/ultimaterewards
Bonus rewards earned at Ultimate Rewards Mall	\$0.00	
Current rewards balance	\$101.30	

Your Chase Freedom credit card allows you to earn Unlimited Cash Back Rewards with No Expiration! You earn a full 1% cash back on ALL of your purchases with ongoing opportunities to earn even more! Earn up to an additional 10% cash back when you shop online through the Ultimate Rewards Mall. You can redeem your Cash Back Rewards for cash, gift cards, travel or merchandise. To redeem, go online at www.chase.com/ultimaterewards or call us at (800) 610-5676.

ACCOUNT ACTIVITY

Date of Transaction	Merchant Name or Transaction Description	\$ Amount
12/11	[REDACTED]	[REDACTED]
11/17	[REDACTED]	[REDACTED]
11/19	LEGALZOOM.COM 800-7730888 CA	121.95
11/22	[REDACTED]	[REDACTED]
11/23	[REDACTED]	[REDACTED]
11/23	[REDACTED]	[REDACTED]
11/25	[REDACTED]	[REDACTED]
11/27	[REDACTED]	[REDACTED]
11/29	[REDACTED]	[REDACTED]
12/10	[REDACTED]	[REDACTED]
12/12	[REDACTED]	[REDACTED]



November 19, 2009



Todd Janson
299 Romaine Spring View
Fenton, MO 63026

Order #6659502

Dear Todd Janson:

Thank you for ordering your Last Will & Testament from LegalZoom. Your customized Last Will & Testament is enclosed.

Your customized Last Will & Testament Package includes the following documents:

- **Last Will and Testament:** This document details your will in distribution of assets and naming of guardians for your minor children. It should be signed in all applicable places and dated by you in front of two (2) witnesses. All of the witnesses should watch you sign the Will. The following persons should NOT be used as a witness:
 - Your spouse or children
 - Any person who will receive anything or benefit from the Will
 - Any person under 18 years old
- **Self-Proving Affidavit:** This document is optional. It does not have to be signed, notarized or used in order to make the Last Will and Testament itself valid. Instead, it simply eliminates the need to have your witnesses testify during the probate process that they saw you sign the Will. If you choose to use it, sign the Self-Proving Affidavit in the presence of the same two witnesses and a notary public, and then attach it to the Will. Please note, the notary cannot serve as a witness.

LAST WILL AND TESTAMENT

Guardian's Guide

Why do people name Guardians in their wills?

Naming a guardian for a child (or children) is one of the most important considerations in a will. Typically, if one parent dies, the surviving parent will remain responsible for the children. However, complications arise if both parents die simultaneously, or if one parent has remarried. To try and keep the courts from deciding who will take custody of the child, the testator of the will has appointed you to be the Guardian, should he or she become deceased.



Guardian: Person appointed to take care of someone else's child (children).

Testator: Person who is making the will.

As the appointed Guardian, you should know the court will balance your desires with what is in the best interest of the children. For example, if you are the stepparent (and not the child's natural parent), you may want to prepare and state your reasoning on why you would be a better parent for the child.

Here are some factors to consider when deciding whether or not to accept becoming a potential guardian:

- Are you old enough? (You must be an adult—18 years old in most states.)
- Do you have a genuine concern for the children's welfare?
- Are you physically able to handle the job?
- Do you have the time?
- Can you provide enough assets to raise the children?
- Do you share the moral beliefs of the testator?

Guardians are responsible for a child's health, education and other daily needs. They are also responsible for managing a child's property (unless a Testamentary Trust has been created for the child—see "Testamentary Trusts" below).

Testamentary Trusts

A Testamentary Trust is used to hold property for the benefit of another. If you are the named trustee of a child's trust, you take care of that property for the child until he or she fulfills the condition outlined in the will, usually upon reaching a certain age or completing school.

The trustee is usually the person appointed as the guardian of the children, but it can be someone else.

Many rules apply to the trustee. For example, the trustee must act in the best interest of the beneficiary (the child). Also, the trustee cannot mishandle the property or use it for his or her own benefit.

LAST WILL AND TESTAMENT

Executor's Guide

What are an Executor's* responsibilities?

*also called Personal Representative

As an Executor, you have been personally given the responsibility for managing a person's estate after they are gone. In essence, an Executor will need to manage the deceased person's property until all debts and taxes have been paid, and then transfer what is left to the people who are entitled to it.

As an Executor, you do not need to be a legal or financial expert. However, you must maintain a high degree of fairness, patience and honesty.

Executors have a number of duties, depending on the complexity of the deceased person's financial and family circumstances.

Some common steps personal representatives take in performing their duties are:

- **File the Will with the local probate courthouse.**

Contact the court clerk to find out the amount of filing fees and if any additional legal papers are required.

- **Find the deceased person's assets and manage them during the probate process.**

This may involve deciding whether to sell real estate or securities owned by the deceased person. This may also include terminating leases and credit cards, and notifying banks and government agencies—such as the Social Security Administration, the post office, Medicare, and the Department of Veterans Affairs—of the death.

- **Set up an estate bank account.**

This account will hold money that is owed to the deceased person—for example, paychecks or stock dividends.

- **Use estate funds to pay expenses.**

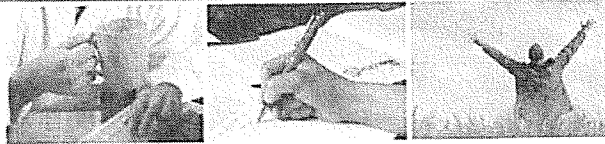
The Executor may need to pay mortgage payments, utility bills, homeowner's insurance premiums, debts, and possibly taxes.

- **Supervise the distribution of the deceased person's property.**

The property will go to the people or organizations named in the will or who are entitled to inherit under state law.



"As an Executor, you have been personally given the responsibility of managing a person's estate after they are gone."



notarizing your documents

What is a notary public?

A notary public is a person trained and appointed by the state to serve as an impartial witness to important events. Notaries can perform many tasks, one of the most important of which is to verify that a signature on a document is the actual signature of the person named in that document.

Is notarization required by law?

The law on notarization varies from state to state and document to document. In most states, however, health care directives, real estate deeds and other documents are not legally binding unless they are properly notarized. Your final instructions will tell you whether your document requires notarization.

What type of identification will I need to provide to get my signature verified?

A notary will verify your identity by comparing your signature on a document to the signature on your identification card. A proper form of identification will have both a signature and photograph. The following are usually considered proper forms of identification:

1. Driver's License or State ID Card
2. U.S. Passport
3. U.S. Military ID
4. Foreign Passport stamped by the U.S. Citizenship and Immigration Services

Check with your notary to determine what forms of identification you will need to bring to his or her office.

What if the signer can't make a recognizable signature?

If someone is competent but can't make a recognizable signature, they can instead make a "signature by mark." This requires that the signer make a mark, often an X, and that two (2) people witness this act. The notary will then provide a form, completed and signed by those witnesses, that allows the X to be the signer's legal signature on that document.

How much does notarization cost?

Notary fees vary from state to state. Prices are set per page or per signature and usually range from \$0.50 to \$10.00. Check with your notary to determine what fees will apply to your situation.

Where can I find a notary?

You can usually find a notary at your bank or at most UPS or Mail Boxes Etc. stores. If you need a notary to come to you, your phone book may have listings for traveling notaries. Before making an appointment, call the notary ahead of time to ensure that the notary you have selected is willing to notarize your documents. Some notaries may refuse to notarize unfamiliar documents or documents they did not create.

November 19, 2009



Todd Janson
299 Romaine Spring View
Fenton, MO 63026

Order #6659502

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Thank you for ordering your Last Will & Testament from LegalZoom. Your customized Last Will & Testament is enclosed.

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 - Any person who will receive anything or benefit from the Will
 - Any person under 18 years old
- **Self-Proving Affidavit:** This document is optional. It does not have to be signed, notarized or used in order to make the Last Will and Testament itself valid. Instead, it simply eliminates the need to have your witnesses testify during the probate process that they saw you sign the Will. If you choose to use it, sign the Self-Proving Affidavit in the presence of the same two witnesses and a notary public, and then attach it to the Will. Please note, the notary cannot serve as a witness.

- **Statement of Interment:** This document details your wishes regarding the disposition of your remains. It should be signed and dated by you in front of two (2) witnesses. You may use the same witnesses as with the Last Will and Testament.

For your convenience, along with your Last Will & Testament document, your package includes some useful guides and a property worksheet:

- **Guide to Your Last Will and Testament:** LegalZoom has prepared this guide to assist you with your next steps and help you plan and organize your estate.
- **Guide to Notarizing Your Documents:** This guide is intended to help you understand more about the Notary Public and notarization requirements.
- **Executor's Guide:** Give this guide to your Executor to ensure your estate is properly handled.
- **Guardian's Guide:** Give this guide to the nominated Guardian of your children to help him or her make the right decisions.
- **Property Worksheet:** Use this worksheet to manage your assets and liabilities

Finding a Notary Public. The primary duty of a notary public is to acknowledge signatures on a document - to ensure that the signer's identity, signature, and reasons for signing such instruments are genuine. You can usually find a notary at your bank or at most UPS Stores. We strongly recommend you contact the notary in advance to ensure that they will sign the document. Some notaries may refuse to notarize unfamiliar documents or documents that they did not create.

Storing your Will. The original of the Will should be kept in a secure location such as a safe deposit box. Copies should be kept in a safe place, such as your home or office, for your personal reference.

Important information about retrieving your Will. We take our customer's privacy very seriously. For that reason, *only you* can retrieve a copy of your Last Will and Testament from LegalZoom. If you would like others to have access to your Will, please be sure to give them copies of your signed and executed Will or provide them instructions on how to access the original copy that you have kept.

Modifications to the Will. In most states, a Will cannot be legally changed by simply adding, deleting or modifying the existing document, including writing on it or crossing things out. Generally, the best way to keep your Will up to date and legally valid is to make a new Will. With LegalZoom, if you return to revise your Will, we will automatically create a new Will for you. Some reasons to make a new Will are a change

in marital status, birth of a child, a move to another state, the death of a beneficiary, or the death of your named guardian or executor.

If you would like to make revisions to your Will or any other LegalZoom estate planning document, go to www.legalzoom.com and click on the "My Account" link at the top of the home page. Then enter the email address and password you used when you originally placed your order. Clicking the "Revise Order" link will allow you to access your previously completed questionnaire. If you need further assistance with making your revisions, please call us at 1-888-821-6153.

Payable Upon Death Accounts and Joint Property. Bank, brokerage, life insurance and other financial accounts often allow you to name a beneficiary if you pass away. This often supersedes the instructions in your Last Will. Please take the time to review any beneficiaries you've directly designated in your financial accounts to see if they match your overall objectives. You should also review any property and assets that are held jointly with another person.

Thank you again for choosing LegalZoom. We look forward to serving your legal document needs in the future. If you should have any questions concerning your document, please contact us at customersupport@legalzoom.com or call 1-800-773-0888.

Sincerely,

The LegalZoom Team

TODD JANSON, et al.,)	
)	
)	
Plaintiffs,)	
)	
v.)	Case No. 10-04018-CV-C-NKL
)	
LEGALZOOM.COM, INC.)	
)	
)	
Defendant.)	

Chad M. Ferrell, being sworn, states:

6. I did not draft any of the terms of service.

7. I did not have the opportunity to negotiate any terms of service with Legalzoom.com.

8. The terms of service were presented to me on a take-it-or-leave-it basis. There was no give-and-take between me and Legalzoom.com.

9. I live and am employed in the state of Missouri and have no property or business in the state of California.

10. If this case were transferred to California I would not be inclined to continue with the prosecution of this case due to the inconvenience of traveling between California and Missouri.

11. If this case were transferred to California, I would also not be able inclined to continue with the prosecution of this lawsuit due to the costs of traveling to California. One roundtrip plane ticket costs much more than the amount that Legalzoom.com charged me.

12. I declare under the penalty of perjury that the foregoing is true and correct.

Chad M Ferrell

Chad M. Ferrell

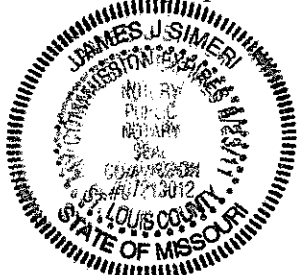
3-17-10

Date

State of Missouri)

County of St. Louis)

On March 17, 2010, Chad M. Ferrell personally appeared before me, a notary public in Missouri. Mr. Ferrell is known to me to be the person who signed this document, and acknowledged to me that he signed it for the purposes therein stated.



[Signature]
Notary Public

3/17/2010
Date